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Attorney for Plaintiffs
Americans with Disabilities Advocates,
RICHARD WHITEHURST and GEORGE S. LOUIE

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADR

AMERICANS WITH DISABILITIES

ADVOCATES, a Nevada Nonprofit

Corporation, RICHARD WHITEHURST and

GEORGE S. LOUIE

Plaintiffs,

vs.

BRYANT MORTUARY INC. DBA BRYANT

MORTUARY INC. dba BRYANT MORTUARY

INC. DBA BRYANT MORTUARY, 635 FULTON

STREET, SAN FRANCISCO, CA

Defendants.

Case No.

CIVIL RIGHTS

COMPLAINT FOR VIOLATION OF CIVIL
RIGHTS AND DISCRIMINATION
AGAINST PERSONS WITH
DISABILITIES; AMERICANS WITH
DISABILITIES ACT OF 1990; CAL. CIVIL
CODE §§54, ET SEQ.; CAL. CIVIL CODE
§§51, ET SEQ.; CAL. CIVIL CODE
§§345; CAL. HEALTH & SAFETY CODE
§§19955, ET SEQ.; CAL. BUS. & PROF.
CODE §17200, ET SEQ.; NEGLIGENCE;
DECLARATORY RELIEF; DAMAGES
FOR PERSONAL INJURY

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiffs complain of Defendants herein and allege that:

AMERICANS WITH DISABILITIES ADVOCATES is a Nevada Nonprofit Corporation
organized with the principal purpose of helping to eliminate discrimination against individuals
with disabilities by ensuring public facilities are in compliance with laws intended to provide

1 access to housing, public buildings, transportation, goods and services and to make sure that
2 people with disabilities are treated with dignity.

3 In addition, AMERICANS WITH DISABILITIES ADVOCATES ensures that disabled
4 persons are offered the same opportunities extended to people without disabilities and helps to
5 educate persons with disabilities about the laws related to them.

6 Members of AMERICANS WITH DISABILITIES ADVOCATES are primarily
7 individuals with disabilities and persons related to individuals with disabilities. Membership
8 includes residents throughout the United States.

9 As a result of their disabilities, certain accommodations are necessary to allow
10 AMERICANS WITH DISABILITIES ADVOCATES members access to public buildings,
11 transportation, goods and services.

12 AMERICANS WITH DISABILITIES ADVOCATES is committed to serving the needs
13 of all disabled people and fully supports the Americans With Disabilities Act of 1990, California
14 Disabled Persons Act and Unruh Civil Rights Act.

15 AMERICANS WITH DISABILITIES ADVOCATES believes the goals and objectives
16 of these laws will enhance the quality of our society, that the American economy will be made
17 stronger by businesses that reach out to include all segments of the population, and that these
18 laws ultimately help to invigorate the economy by bringing more individuals with disabilities
19 into the consumer mainstream. It is also AMERICANS WITH DISABILITIES ADVOCATES'
20 belief that meaningful efforts to do so will offer many citizens more opportunities to participate
21 fully in the economic and social mainstream. There can be no question that the Americans With
22 Disabilities Act, passed in 1990, established as law the nation's interest in eradicating the bigotry
23 and barriers faced by individuals with disabilities 42 U.S.C. §12101 et seq (hereafter "ADA").
24 In fact, the ADA states its first goal as being "to provide a clear and comprehensive national
25 mandate for the elimination of discrimination against individuals with disabilities." See, 42
26 U.S.C. §12101 (b) (1) (1999). The ADA creates the possibility that successful Plaintiffs may
27 establish permanent changes in the design and physical configuration of structures to better
28 accommodate the disabled 42 U.S.C. §12101 (A) (5). The benefits of each change clearly

rebound not only to Plaintiffs themselves, but also to similarly situated disabled persons, and the entire society at large. Plaintiffs or Plaintiffs' classes who bring suit pursuant to the ADA do so in the role of "private attorneys general" who seek to vindicate "a policy of the highest priority" See, *Christiansburg Garment Co v EEOC*, 434 U.S. 412, 417, 98 S.Ct. 694, 698 (discussing ADA Plaintiffs as private attorneys general); *Rosenberg v Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 170 F.3d 1, 11 (1st Cir, 1999).

BRYANT MORTUARY INC. DBA BRYANT MORTUARY provides inadequate access to people with disabilities, including, inter alia:. Plaintiff was denied equal access to The Business', because Defendants failed to provide access to The Business' restroom. Plaintiff attempted to use the restroom and its facilities. The restrooms were configured in violation of the requirements of the Americans With Disabilities Act of 1990, 42 U.S.C. Sections 12101, et. seq. and 28 C.F.R. Ch 1 (7-1-94 Edition) Sections 36.34 et. seq. On information and belief, the restroom is inaccessible to persons with disabilities and other aspects, including but not limited to the narrowness of the doorways lack of sufficient turning space adjacent to the sink, the lack of proper configured sink and hardware for the use by a disabled person who uses a wheelchair, lack of grab bars in the toilet stall; lack of a raised toilet seat; lack of full length restroom mirror. As a result of denial of access to the restroom facilities, Plaintiffs suffered physical discomfort. Plaintiff, George S. Louie, suffered personal injury and had an urination accident because he could not access a handicap accessible restroom and suffered physical. Because of these barriers, entering this facility was impossible for persons with mobility disabilities, such as the Plaintiffs, to gain access to this facility.

JURISDICTION

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. sections 1343(a)(3) and 1343(a)(4) for claims arising under the Americans With Disabilities Act of 1990, 42 U.S.C. sections 12101, et. seq. Plaintiffs' cause of action arose in this district. BRYANT MORTUARY INC. DBA BRYANT MORTUARY are residents of OAKLAND, California.

1 Under the doctrine of pendant and supplemental jurisdiction, this Court has jurisdiction
2 over Plaintiffs' claims arising under California State law.
3

4 VENUE

5 3. Pursuant to 28 U.S.C. section 1391(b), venue is proper in the District in which this
6 complaint is filed, which is the judicial district in which the claims have arisen. BRYANT
7 MORTUARY INC. DBA BRYANT MORTUARY is a California corporation and or business.
8

9 PARTIES

10 4. Plaintiff GEORGE S. LOUIE is an individual with a physical disability within the
11 meaning of all applicable statutes, including the ADA, 42 United States Code section 12101, et
12 seq., California Civil Code sections 54 et. seq., California Business and Professions Code
13 sections 17200, et seq., and California Health and Safety Code sections 19955, et seq. Plaintiff
14 GEORGE LOUIE is a physically disabled or "physically handicapped" person who often
15 requires use of a wheelchair to travel about in public places. Mr. LOUIE is a diabetic whose
16 physical conditions required the amputation of his right leg in 1996. Although he sometimes can
17 walk with the aid of a prosthesis, at other times difficulties with sores on the stump of his
18 amputated leg, make use of the prosthesis difficult or impossible and requires that he use a
19 wheelchair in order to travel about in public. Plaintiff RICHARD WHITEHURST is an
20 individual with a physical disability within the meaning of all applicable statutes, including the
21 ADA, 42 United States Code section 12101, et seq., California Civil Code sections 54 et. seq.,
22 California Business and Professions Code sections 17200, et seq., and California Health and
23 Safety Code sections 19955, et seq. Plaintiff is a physically disabled or "physically
24 handicapped" person who often requires use of a wheelchair to travel about in public places. Mr.
25 WHITEHURST has degenerative gout whose physical conditions required the use of a
26 wheelchair. Although he sometimes walk, at other times difficulties with sores in his limbs,
27 makes it difficult or impossible to walk and requires that he use a wheelchair in order to travel
28 about in public.

1 5. Defendants BRYANT MORTUARY INC. DBA BRYANT MORTUARY, are
2 located in OAKLAND, CA, is a for-profit partnership that owns, operates, maintains and/or
3 controls retail establishments located in the City of OAKLAND, County of ALAMEDA, State of
4 California.

5 6. Plaintiffs are informed and believe, and therefore allege, that BRYANT
6 MORTUARY INC. DBA BRYANT MORTUARY business was newly built and/or underwent
7 substantial remodeling, repairs or alterations after 1971.

8 7. Defendants have known that BRYANT MORTUARY INC. DBA BRYANT
9 MORTUARY violated disability access requirements and standards, but have refused to rectify
10 the violations.

11
12 **FACTUAL ALLEGATIONS**
13

14 8. GEORGE S. LOUIE is the Executive Director of the AMERICANS WITH
15 DISABILITIES ADVOCATES and is a physically disabled person who uses a wheelchair for
16 mobility. RICHARD WHITEHURST is a Member of the AMERICANS WITH DISABILITIES
17 ADVOCATES and is a physically disabled person who often uses a wheelchair for mobility.

18 9. Within the last 12 months before the filing of this complaint, Plaintiffs RICHARD
19 WHITEHURST and GEORGE S. LOUIE visited BRYANT MORTUARY.

20 10. Plaintiffs will visit this facility on a regular basis when it comes into compliance with
21 state and federal law.

22 11. Defendants own, operate and/or maintain a public accommodation as BRYANT
23 MORTUARY INC. DBA BRYANT MORTUARY located in the City of OAKLAND, County
24 of ALAMEDA, and State of California. This case arises out of Defendants' failure to provide
25 the minimum legally required access to its public accommodations for persons with disabilities.

26 12. BRYANT MORTUARY INC. DBA BRYANT MORTUARY have the following
27 violations:
28

a. Plaintiff was denied equal access to The Business', because Defendants failed to provide access to The Business' restroom. Plaintiff attempted to use the restroom and its facilities. The restrooms were configured in violation of the requirements of the Americans With Disabilities Act of 1990, 42 U.S.C. Sections 12101, et. seq. and 28 C.F.R. Ch 1 (7-1-94 Edition) Sections 36.34 et. seq. On information and belief, the restroom is inaccessible to persons with disabilities and other aspects, including but not limited to the narrowness of the doorways lack of sufficient turning space adjacent to the sink, the lack of proper configured sink and hardware for the use by a disabled person who uses a wheelchair, lack of grab bars in the toilet stall; lack of a raised toilet seat; lack of full length restroom mirror. As a result of denial of access to the restroom facilities, Plaintiffs suffered physical discomfort. Plaintiff, George S. Louie, suffered personal injury and had an urination accident because he could not access a handicap accessible restroom and suffered physical discomfort.

13. The inaccessibility of BRYANT MORTUARY INC. DBA BRYANT MORTUARY to persons with disabilities is illegal, degrading and humiliating.

14. Many of the actions which Defendants failed to make BRYANT MORTUARY INC. DBA BRYANT MORTUARY accessible to persons with disabilities were readily achievable, required by law and would have greatly assisted persons with disabilities at little expense to Defendants.

15. Because of these barriers, entering this facility was impossible for persons with mobility disabilities, such as the Plaintiffs, to gain access to this facility.

16. California's Unruh Civil Rights Act, Civil Code Section 52(a) reads as follows: Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51, 51.5 or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without jury, up to a maximum of

three times the amount of actual damage but in no case less than four thousand dollars (\$4,000.00), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5, or 51.6. Amended January 1st, 2002.

17. The Attorney General of the State of California believes that the former \$1,000.00 damage award is unlikely to have sufficient deterrent effect on the discriminatory practices of a large company. Defendants may have had hundreds or thousands of transactions that violated the Americans with Disabilities Act of 1990 and the California's Unruh Civil Rights Act and which would have unjustly enriched them. Thus, the prospect of paying an occasional four thousand dollars (\$4,000.00) damage award due to a discriminatory practice may be calculated as an absorbable cost of doing business. The minimum amount was increased to at least \$4,000.00. See California's Unruh Civil Rights Act Section 52(a), Amended January 1st, 2002. This legislation was supported by California Attorney General, Anti-Defamation League and California School Employees Association.

18. The United States Court of Appeals for the Ninth Circuit in Botosan vs. Paul McNally Realty, 216 F.3rd 827 at 835 (June 20, 2000) held that, "Consumer was entitled to award of statutory minimum damages under California's Unruh Civil Rights Act, even without prove of actual damages", and "Proof of actual damages is not prerequisite to recovery of statutory minimum damages under California's Unruh Civil Rights Act." West's Ann.Cal.Civ.Code §52.

FIRST CLAIM

(Violation of the Americans With Disabilities Act)

19. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-18, inclusive.

20. Defendants' acts and omissions alleged herein are in violations of the ADA, 42 U.S.C. sections 12101, et. seq., and the regulations promulgated thereunder, 28 Code of Federal Regulations Part 36.

1 21. BRYANT MORTUARY INC. DBA BRYANT MORTUARY is a public
2 accommodation covered by Title III of the ADA.

3 22. Defendants have failed to remove barriers to be accessed by persons with disabilities
4 at BRYANT MORTUARY INC. DBA BRYANT MORTUARY where removal of such barriers
5 is readily achievable.

6 23. Defendants have failed to provide necessary auxiliary aids and services at BRYANT
7 MORTUARY INC. DBA BRYANT MORTUARY where provision of such auxiliary aids and
8 services does not pose an undue burden.

9 24. Defendants have failed to modify policies and procedures at BRYANT MORTUARY
10 INC. DBA BRYANT MORTUARY to ensure equal access for persons with disabilities.

11 25. Defendants' conduct constitutes ongoing and continuous violations of the ADA and,
12 unless restrained from doing so, Defendants will continue to violate said law. Said conduct,
13 unless enjoined, will continue to inflict injuries for which Plaintiffs have no adequate remedy at
14 law. Consequently, Plaintiffs are entitled to injunctive relief pursuant to section 308 of the ADA
15 (42 U.S.C. §12188). Plaintiffs are also entitled to recover reasonable attorneys' fees and costs.

16 WHEREFORE, Plaintiffs request relief as set forth below.

17 **SECOND CLAIM**

18 (Violation of Cal. Civ. Code §§54, et. seq.)

19 26. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-27,
20 inclusive.

21 27. The SUBJECT FACILITY constitutes a public accommodation within the meaning
22 of California Civil Code sections 54.1 and 54.3.

23 28. Defendants have violated Plaintiffs' rights by denying them full and equal access to
24 and use and enjoyment of BRYANT MORTUARY INC. DBA BRYANT MORTUARY and in
25 doing so, Defendants have acted willfully and maliciously.
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27
28

29. Defendants' actions constitute a violation of Plaintiffs' rights under California Civil Code sections 54, et. seq., and therefore, Plaintiffs are entitled to injunctive relief remedying the violations. Plaintiffs are also entitled to damages under California Civil Code section 52(a).

30. Plaintiffs are also entitled to reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs request relief as set forth below.

THIRD CLAIM

(Violation of Cal. Civ. Code §§51, and §§52(a) et. seq.)

31. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-32, inclusive.

32. The conduct of Defendants is in violation of California Civil Code sections 51, et. seq., the Unruh Civil Rights Act, in that patrons of the SUBJECT FACILITY who have physical disabilities have either not been provided services and facilities that are provided to other persons or have been provided services and facilities that are not equal to, and are inferior to, the services provided to persons who do not have disabilities.

33. Defendants have committed additional violations of the Unruh Civil Rights Act, in that the conduct alleged herein constitutes a violation of various provisions of the ADA, 42 U.S.C. sections 12101, et. seq., as set forth below.

34. The conduct of the Defendants was and is in violation of the Unruh Civil Rights Act, California Civil Code sections 51, et. seq., and therefore Plaintiffs are entitled to injunctive relief remedying the violations. Plaintiffs are also entitled under California Civil Code section 52 to damages.

35. Plaintiffs are also entitled to reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs request relief as set forth below.

FOURTH CLAIM

(Violation of Cal. Health & Safety Code §§19955, et. seq.)

1
2 36. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-37, inclusive.

3 37. The SUBJECT FACILITY is a public accommodation within the meaning of
4 California Health and Safety Code section 19955 and Defendants have constructed and/or altered
5 the SUBJECT FACILITY within the meaning of California Health and Safety Code section
6 19959. The actions of Defendants constitute a denial of access to and use of the SUBJECT
7 FACILITY by persons with physical disabilities.

8 38. Defendants' failure to fulfill its duty to provide access have caused Plaintiffs to suffer
9 injury.

10 39. As a result of Defendants' violation of Health and Safety Code sections 19955, et.
11 seq., described herein, Plaintiffs are entitled to injunctive relief pursuant to Health and Safety
12 Code section 19953.

13 WHEREFORE, Plaintiffs request relief as set forth below.

14
15 **FIFTH CLAIM**

16 (Unfair Business Practice – Injunctive Relief Only;
17 Cal. Bus. & Prof. Code §§17200, et. seq.)

18 40. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-41,
19 inclusive.

20 41. Defendants' conduct, as alleged, is part of a general business practice by
21 Defendants. Defendants have made a considered decision to promote profit at the expense of
22 Defendants' legal obligations to patrons with disabilities.

23 42. Defendants' policies and practices constitute an unfair business practice within
24 the meaning of California business and Professions Code sections 17200, et. seq., in that inter
25 alia, Defendants appeal to, advertise to, and purport to serve persons with disabilities, yet
26 Defendants' facility is inaccessible and illegal, in violation of public policy.
27
28

1 43. Plaintiffs are entitled to an injunction restraining Defendants from engaging in
2 any act or omission, or failing to engage in any act or omission, the effect of which is to cause,
3 directly or indirectly, discrimination by Defendants against persons with disabilities.

4 44. Plaintiffs are also entitled to attorney's fees and costs.

5 WHEREFORE, Plaintiffs request relief as set forth below.

6
7 **SIXTH CLAIM**
8 **(Negligence)**

9 45. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-46,
10 inclusive.

11 46. Defendants had and continue to have a duty to exercise ordinary care.

12 47. Defendants failed, and continue to fail, to exercise ordinary care.

13 48. As an actual and proximate result of Defendants' failure to exercise ordinary care,
14 Plaintiffs suffered damages in an amount to be determined by proof.

15 49. At all times relevant hereto, there was in effect, the Americans With Disabilities Act,
16 California Civil Code sections 51, et. seq., California Civil Code sections 54, et. seq., and
17 California Health and Safety Code sections 19955, et. seq., all of which have required that
18 public accommodations and facilities provide services to people with disabilities which are
19 equal to, and are not inferior to, the services provided to patrons who are not physically
20 disabled.

21 50. Defendants' acts and omissions alleged herein are in violation of statutory
22 requirements (including, but not limited to, the Americans With Disabilities Act, California
23 Health and Safety Code sections 51, et. seq., California Business and Professions Code section
24 17200, et. seq., and public policy, which statutes are designed to protect persons with disabilities
25 from the type of harm inflicted on Plaintiffs.

26 51. Defendants' conduct thus constitutes negligence and negligence per se.

27 WHEREFORE, Plaintiffs request relief as set forth below.

28 **SEVENTH CLAIM**

(Declaratory Relief)

52. Plaintiffs incorporated by reference herein the allegations in paragraph 1-53, inclusive.

53. Plaintiffs contend, and are informed and believe that Defendants deny that the SUBJECT FACILITY fails to comply with applicable laws prohibiting discrimination against persons with disabilities and are in violation of statutes including, but not limited to, California Civil Code sections 54, et. seq., California Civil Code sections 51, et. seq., the ADA, Business and Professions Code section 17200, et. seq., and California Health and Safety Code sections 19955, et. seq.

54. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

WHEREFORE, Plaintiffs request relief as set forth below.

EIGHTH CLAIM

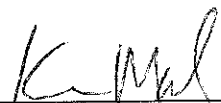
**(VIOLATION OF CALIFORNIA CIVIL CODE, SECTION §3345, UNFAIR OR
DECEPTIVE PRACTICES AGAINST SENIOR CITIZENS OR DISABLED PERSONS,
TREBLE DAMAGES)**

55. Plaintiffs incorporate by reference paragraphs 1-56 above.

56. This section shall apply only in actions brought by, on behalf of, or for the benefit of senior citizens or disabled persons as those terms are defined in subdivisions (f) and (g) of Section 1761, to redress unfair or deceptive acts or practices or unfair methods of competition.

57. Whenever a trier of fact is authorized by a statute to impose either a fine, or a civil penalty or other penalty, or any other remedy the purpose of effect of which is to punish or deter, and the amount of the fine, penalty, or other remedy is subject to the trier of fact's discretion, the trier of fact shall consider all of the following factors, in addition to other appropriate factors, in determining the amount of fine, civil penalty or other penalty, or other remedy in an amount up to three times greater than authorized by the statute, or, where the statute does not authorize a specific amount, up to three times greater than the amount the trier of fact would impose in the absence of that affirmative finding:


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2 DATED: April 9, 2003
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6 Kim F. Mallory, Esq.
7 Attorney for Plaintiffs
8 Americans With Disabilities
9 Advocates, RICHARD
10 WHITEHURST and GEORGE S.
11 LOUIE
12

13
14 **DEMAND FOR JURY TRIAL**
15

16 PLAINTIFFS hereby demands a jury for all claims for which a jury
17 is permitted.
18

19 Dated: April 9, 2003
20

21
22 
23 Kim F. Mallory, Esq.
24 Attorney for Plaintiffs
25 Americans With Disabilities
26 Advocates, RICHARD
27 WHITEHURST and GEORGE S.
28 LOUIE